

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Elizabeth Y. Howe, in individual
and representative capacity as
trustee of the Stephen L. and
Elizabeth Y. Howe 1998 Trust dated
October 24, 1998;
Ashley's Cafe Corporation, a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Elizabeth Y. Howe, in individual and representative capacity as trustee of the Stephen L. and Elizabeth Y. Howe 1998 Trust dated October 24, 1998; Ashley's Cafe Corporation, a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord

1 injury. He is a quadriplegic. He uses a wheelchair for mobility.

2 2. Defendant Elizabeth Y. Howe, in individual and representative capacity
3 as trustee of the Stephen L. and Elizabeth Y. Howe 1998 Trust dated October
4 24, 1998, owned the real property located at or about 4454 California Street,
5 San Francisco, California, in September 2021.

6 3. Defendant Elizabeth Y. Howe, in individual and representative capacity
7 as trustee of the Stephen L. and Elizabeth Y. Howe 1998 Trust dated October
8 24, 1998, owns the real property located at or about 4454 California Street,
9 San Francisco, California, currently.

10 4. Defendant Ashley's Cafe Corporation owned Ashley's Café located at
11 or about 4454 California Street, San Francisco, California, in September
12 2021.

13 5. Defendant Ashley's Cafe Corporation owns Ashley's Café
14 ("Restaurant") located at or about 4454 California Street, San Francisco,
15 California, currently.

16 6. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein is
21 responsible in some capacity for the events herein alleged, or is a necessary
22 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
23 the true names, capacities, connections, and responsibilities of the Defendants
24 are ascertained.

25
26 **JURISDICTION & VENUE:**

27 7. The Court has subject matter jurisdiction over the action pursuant to 28
28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with

1 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

2 8. Pursuant to supplemental jurisdiction, an attendant and related cause
3 of action, arising from the same nucleus of operative facts and arising out of
4 the same transactions, is also brought under California's Unruh Civil Rights
5 Act, which act expressly incorporates the Americans with Disabilities Act.

6 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
7 founded on the fact that the real property which is the subject of this action is
8 located in this district and that Plaintiff's cause of action arose in this district.

9
10 **FACTUAL ALLEGATIONS:**

11 10. Plaintiff went to the Restaurant in September 2021 with the intention
12 to avail himself of its goods or services motivated in part to determine if the
13 defendants comply with the disability access laws.

14 11. The Restaurant is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
17 to provide wheelchair accessible outside dining surfaces in conformance with
18 the ADA Standards as it relates to wheelchair users like the plaintiff.

19 13. The Restaurant provides outside dining surfaces to its customers but
20 fails to provide wheelchair accessible outside dining surfaces.

21 14. A couple of problems that plaintiff encountered was that there was
22 insufficient toe and knee clearance under the dining surfaces.

23 15. Plaintiff believes that there are other features of the outside dining
24 surfaces that likely fail to comply with the ADA Standards and seeks to have
25 fully compliant dining surfaces for wheelchair users.

26 16. On information and belief, the defendants currently fail to provide
27 wheelchair accessible outside dining surfaces.

28 17. Additionally, on the date of the plaintiff's visit, the defendants failed to

1 provide wheelchair accessible sales counters in conformance with the ADA
2 Standards as it relates to wheelchair users like the plaintiff.

3 18. The Restaurant provides sales counters to its customers but fails to
4 provide wheelchair accessible sales counters.

5 19. A problem that plaintiff encountered was that the sales counters was too
6 high. There was no section of the counter that was 36 inches in height or lower.

7 20. Plaintiff believes that there are other features of the sales counters that
8 likely fail to comply with the ADA Standards and seeks to have fully compliant
9 sales counters for wheelchair users.

10 21. On information and belief, the defendants currently fail to provide
11 wheelchair accessible sales counters.

12 22. Finally, on the date of the plaintiff's visit, the defendants failed to
13 provide wheelchair accessible paths of travel in conformance with the ADA
14 Standards as it relates to wheelchair users like the plaintiff.

15 23. The Restaurant provides paths of travel to its customers but fails to
16 provide wheelchair accessible paths of travel.

17 24. A problem that plaintiff encountered was that there was a set of entry
18 doors at the Restaurant. Each doorway has a clear width space of 28.5 inches.
19 This is too narrow for wheelchair users.

20 25. Plaintiff believes that there are other features of the paths of travel that
21 likely fail to comply with the ADA Standards and seeks to have fully compliant
22 paths of travel for wheelchair users.

23 26. On information and belief, the defendants currently fail to provide
24 wheelchair accessible paths of travel.

25 27. The failure to provide accessible facilities created difficulty and
26 discomfort for the Plaintiff

27 28. These barriers relate to and impact the plaintiff's disability. Plaintiff
28 personally encountered these barriers.

1 29. As a wheelchair user, the plaintiff benefits from and is entitled to use
2 wheelchair accessible facilities. By failing to provide accessible facilities, the
3 defendants denied the plaintiff full and equal access.

4 30. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 31. The barriers identified above are easily removed without much
8 difficulty or expense. They are the types of barriers identified by the
9 Department of Justice as presumably readily achievable to remove and, in fact,
10 these barriers are readily achievable to remove. Moreover, there are numerous
11 alternative accommodations that could be made to provide a greater level of
12 access if complete removal were not achievable.

13 32. Plaintiff will return to the Restaurant to avail himself of its goods or
14 services and to determine compliance with the disability access laws once it is
15 represented to him that the Restaurant and its facilities are accessible. Plaintiff
16 is currently deterred from doing so because of his knowledge of the existing
17 barriers and his uncertainty about the existence of yet other barriers on the
18 site. If the barriers are not removed, the plaintiff will face unlawful and
19 discriminatory barriers again.

20 33. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to his disability. Plaintiff will
23 amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once he conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to his disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, he can sue to have all barriers that relate to his
28 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

34. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

35. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 36. When a business provides dining surfaces, it must provide accessible
2 dining surfaces.

3 37. Here, accessible dining surfaces have not been provided in
4 conformance with the ADA Standards.

5 38. When a business provides sales counters, it must provide accessible
6 sales counters.

7 39. Here, accessible sales counters have not been provided in conformance
8 with the ADA Standards.

9 40. When a business provides paths of travel, it must provide accessible
10 paths of travel.

11 41. Here, accessible paths of travel have not been provided in conformance
12 with the ADA Standards.

13 42. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 43. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 44. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21
22 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
23 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)

25 45. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
 2 every kind whatsoever within the jurisdiction of the State of California. Cal.
 3 Civ. Code §51(b).

4 46. The Unruh Act provides that a violation of the ADA is a violation of the
 5 Unruh Act. Cal. Civ. Code, § 51(f).

6 47. Defendants' acts and omissions, as herein alleged, have violated the
 7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
 8 rights to full and equal use of the accommodations, advantages, facilities,
 9 privileges, or services offered.

10 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 11 discomfort or embarrassment for the plaintiff, the defendants are also each
 12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 13 (c).)

14
 15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide
 17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the
 19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 20 plaintiff is not invoking section 55 of the California Civil Code and is not
 21 seeking injunctive relief under the Disabled Persons Act at all.

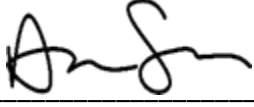
22 2. For equitable nominal damages for violation of the ADA. See
 23 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
 24 and any other equitable relief the Court sees fit to grant.

25 3. Damages under the Unruh Civil Rights Act, which provides for actual
 26 damages and a statutory minimum of \$4,000 for each offense.

27 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
 28 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1
2 Dated: September 30, 2021

CENTER FOR DISABILITY ACCESS

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4 By: 
5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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